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DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

**[Docket No. 12-51]
KAREN PAUL HOLLEY, M.D.
DECISION AND ORDER**

On July 27, 2012, Chief Administrative Law Judge John J. Mulrooney, Jr., issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificate of Registration be revoked and that any pending application to renew or modify her registration be denied.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration Number BH8988339, issued to Karen P. Holley, M.D., be, and it hereby is, revoked. I further order that any pending application of Karen P. Holley, M.D., to renew or modify her registration, be, and it hereby is, denied. This Order is effective **[INSERT DATE THIRTY DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Dated: October 26, 2012

Michele M. Leonhart
Administrator

Theresa Krause, Esq., for the Government
John H. Musser, IV, Esq., for the Respondent

**ORDER GRANTING THE GOVERNMENT'S MOTION FOR
SUMMARY DISPOSITION AND RECOMMENDED DECISION**

Chief Administrative Law Judge John J. Mulrooney, Jr. The Deputy Assistant Administrator, Drug Enforcement Administration (Government), issued an Order to Show Cause (OSC), dated May 21, 2012, proposing to revoke the DEA Certificate of Registration (COR), Number BH8988339, of Karen Paul Holley, M.D. (Respondent), pursuant to 21 U.S.C. § 824(a)(3) and (4) (2006), and to deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. § 823(f). In the OSC, the Government alleges that revocation is necessary because the Respondent is “without authority to handle controlled substances in the State of Louisiana,” the state of the Respondent’s registration. OSC, at 1-2.

On July 3, 2012, the DEA Office of Administrative Law Judges (OALJ) received from the Respondent, through counsel, a timely filed request for hearing (Hearing Request) which, concedes that the Respondent lacks authority to handle controlled substances in the State of Louisiana. The same day, this tribunal issued an order: (1) directing the Government to “provide evidence to support the allegation that the Respondent lacks state authority to handle controlled substances” on or before July 13, 2012; (2) setting a deadline of July 13, 2012, for the Government to file a motion for summary disposition; and (3) setting a deadline of July 25, 2012, for the Respondent to respond to any motion for summary disposition. Briefing Schedule, at 1-2.

On July 6, 2012, the Government filed a Motion for Summary Disposition (“MSD”) , seeking: (1) summary disposition; and (2) a recommendation that “the Respondent’s DEA COR as a practitioner be revoked, based on the Respondent’s lack of a state license.” MSD, at 5. A

copy of an April 21, 2012, Order for Summary Suspension of Medical License issued by the Louisiana State Board of Medical Examiners (Louisiana Board Order) was attached to the motion. The Respondent did not file a response to the Government's motion within the time allowed. Accordingly, the motion will be deemed unopposed.

The Controlled Substances Act (CSA) requires that, in order to maintain a DEA registration, a practitioner must be authorized to handle controlled substances in "the jurisdiction in which he practices." See 21 U.S.C. § 802(21) ("[t]he term 'practitioner' means a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice"); see also id. § 823(f) ("The Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices."). DEA has long held that possession of authority under state law to dispense controlled substances is an essential condition for obtaining and maintaining a DEA registration. Serenity Café, 77 Fed. Reg. 35027, 35028 (2012); David W. Wang, 72 Fed. Reg. 54297, 54298 (2007); Sheran Arden Yeates, 71 Fed. Reg. 39130, 39131 (2006); Dominick A. Ricci, M.D., 58 Fed. Reg. 51104 (1993); Bobby Watts, M.D., 53 Fed. Reg. 11919 (1988). Because "possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration," this Agency has consistently held that "the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority]." Roy Chi Lung, 74 Fed. Reg. 20346, 20347 (2009); see also Scott Sandarg, D.M.D., 74 Fed. Reg. 17528, 174529 (2009); John B. Freitas, D.O., 74 Fed. Reg. 17524, 17525 (2009); Roger A. Rodriguez, M.D., 70 Fed. Reg. 33206, 33207 (2005); Stephen J. Graham, M.D., 69 Fed. Reg. 11661 (2004); Abraham A. Chaplan, M.D., 57 Fed. Reg. 55280 (1992); see also Harrell E. Robinson, 74 Fed. Reg. 61370,

61375 (2009). “[R]evocation is warranted even where a practitioner’s state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State’s action at which he may ultimately prevail.” Kamal Tiwari, M.D., 76 Fed. Reg. 71604, 71606, (2011); see also Bourne Pharmacy, Inc., 72 Fed. Reg. 18273, 18274 (2007); Anne Lazar Thorn, 62 Fed. Reg. 12847 (1997).

Congress does not intend for administrative agencies to perform meaningless tasks. See Philip E. Kirk, M.D., 48 Fed. Reg. 32887 (1983), aff’d sub nom. Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); see also Puerto Rico Aqueduct & Sewer Auth. v. EPA, 35 F.3d 600, 605 (1st Cir. 1994); NLRB v. Int’l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL-CIO, 549 F.2d 634 (9th Cir. 1977); United States v. Consol. Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971). Thus, it is well-settled that, where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required. See Jesus R. Juarez, M.D., 62 Fed. Reg. 14945 (1997); Dominick A. Ricci, M.D., 58 Fed. Reg. 51104 (1993). Here, both parties agree, and the supplied Louisiana Board Order establishes, that the Respondent is without authorization to practice medicine or handle controlled substances in Louisiana, the jurisdiction where the Respondent holds the DEA COR that is the subject of this litigation.

Summary disposition of an administrative case is warranted where, as here, “there is no factual dispute of substance.” See Veg-Mix, Inc., 832 F.2d 601, 607 (D.C. Cir. 1987) (“an agency may ordinarily dispense with a hearing when no genuine dispute exists”).¹ At this juncture, no genuine dispute exists over the fact that the Respondent lacks state authority to

¹ Even assuming arguendo the possibility that the Respondent’s state controlled substances privileges could be reinstated, summary disposition would still be warranted because “revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement,” Rodriguez, 70 Fed. Reg. at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state courts. Michael G. Dolin, M.D., 65 Fed. Reg. 5661, 5662 (2000).

handle controlled substances in the State of Louisiana. Because the Respondent lacks such state authority, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that the Respondent is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that would provide DEA with the authority to allow the Respondent to continue to hold his COR. I therefore conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. See Gregory F. Saric, M.D., 76 Fed. Reg. 16821 (2011) (stay denied in the face of Respondent's petition based on pending state administrative action wherein he was seeking reinstatement of state privileges).

Accordingly, I hereby

GRANT the Government's Motion for Summary Disposition;
and **RECOMMEND** that the Respondent's DEA registration be **REVOKED** forthwith and any pending applications for renewal be **DENIED**.

Dated: July 27, 2012

/s/ JOHN J. MULROONEY, II
Chief Administrative Law Judge